IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

MACA.No. 368 of 2004(G)

O.P.(MV).NO.1487/1995 OF ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY.

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APPELLANT/PETITIONER:

THOMAS P.J. S/O.JOSEPH, RESIDING AT PERUMPANANIKKAL HOUSE, THETTUVAZHY, P.O.NEDUMPOYIL THALASSERY TALUK, DISTRICT KANNUR.

BY ADV. SRI.C.KHALID,
SRI.T.P.SAJID.

RESPONDENTS/RESPONDENTS:
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1. **PADIKKAL BABU, S/O.KUNHIRAMAN, MANATHANAM AMSOM P.O., PERAVOOR, THALASSERY TALUK, DISTRICT KANNUR.**

2. **VELLAIKANDAVATHUMKANDY RAMESAN, S/O.KUNHIRAMA, MANATHANAM AMSOM, P.O. PERAVOOR, THALASSERY TALUK, DISTRICT KANNUR.**

3. **NATIONAL INSURANCE CO.LTD., REP. BY ITS DIVISIONAL MANAGER, DIVISIONAL OFFICE, KANNUR.**

BY ADV. SRI.P.NARAYANAN,
SRI.JOE KALLIATH.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 368 of 2004

Dated this the 1st day of June, 2007

Judgment

Koshy, J.

The appellant/petitioner filed O.P. (M.V.) No.1487 of 1995 on the file of Additional Motor Accidents Claims Tribunal, Thalassery claiming a compensation of Rs. Five lakhs on account of the injuries sustained by him in a motor accident involving mini lorry No.KL-13/A 8192. The case of the appellant is that on 28.4.1995 he was travelling in the aforesaid mini lorry accompanying his goods and when he reached Kadirur, it capsized on the road side. The petitioner sustained serious injuries in the accident. He was; immediately taken to the Medical College Hospital, Kozhikode and he was treated as an inpatient in the said hospital for 22 days. Even after discharge, he was being treated as an outpatient in the Medical College Hospital for some time and thereafter he was treated at P.V.S. Hospital, Kozhikode. He sustained very serious injuries like fracture of occipital bone, frontal bone contusion, brain stem contusion with intra cranial haemotoma,mild cerebral oedema and other injuries

on account of the accident. He was permanently incapacitated from doing his work. He was a rubber tapper by profession and he was earning Rs.3,000/- per month. On account of the accident, he was unfit to do the work any more. Tribunal found that the accident occurred due to the rash and negligent driving of the second respondent and the vehicle was owned by the first respondent and insured by the third respondent insurance company. Insurance company was directed to deposit the compensation awarded. Grievance of the appellant is that total compensation awarded was only Rs.94,820/- against the claim of Rs. Five lakhs. Only quantum of compensation is disputed in this appeal.

2. Contention of the appellant is that he is unable to do any work as a result of the injuries sustained in the accident. According to him, he sustained serious injuries like fracture of occipital bone, frontal bone contusion, brain stem contusion with intra cranial haemotoma, mild cerebral oedema, besides the other simple injuries. He was immediately taken to the Medical College Hospital, Kozhikode and he continued there for 22 days as an inpatient. Even after discharge, he continued his treatment by way of periodic review in

the Medical College Hospital, Kozhikode till 3.8.1995 and after that he continued effective treatment in other hospitals including the P.V.S. Hospital, Kozhikode. Ext.A2 is the copy of the scene mahazar and Ext.A3 is the discharge reference card issued from the Medical College Hospital, Kozhikode at the time of discharge. This discharge card shows that the petitioner was treated as a case of serious head injury sustained in a road accident and he had been in the hospital from 28.4.1995 to 19.5.1995. The card also shows that craneotomy and evacnation of haematoma was don e on 10.5.1995. CT scan of head showed fracture of occipital bone, suspected brain stem contusion, mild cerebral oedema and also haematoma. Ext.A4 series are the OP cards and prescriptions which prove continued and effective treatment for a few months after discharge. Ext.A5 series are also some prescriptions and chits showing the continued treatment under the Neuro Surgeon. Ext.A6 series are the Medical bills and vouchers to prove the claim for medical expenses. Exts.A8 and A9 are audiograms. Ext.A10 is lab report and Ext.A11 series are ECG reports. Ext.A12 is the report of CT scan of brain done on 14.12.1995. This report shows that

craniotomy defect was seen in right frontal bone land there was focal dilatation of frontal horms of lateral ventricle. Ext. A13 series are the reference cards issued from the P.V.S. Hospital, Kozhikode and Ext.A14 is the discharge summary issued from the P.V.S. Hospital, Kozhikode which shows that he was admitted in the said hospital on 1.1.1999 and was discharged on the same day. Ext.A15 is the certificate issued by one Dr.Viswanathan, Assistant Professor of Surgery to the effect that the petitioner had been under his treatment in the Medical College Hospital, Kozhikode and he had fracture of frontal bone and also intracranial haematoma. It is also certifiedl that cramotomy and evacnation of haematoma was done on 10.5.1995. Post operatively he improved. He was not found to be fully oriented as on that day. Ext.A16 is the medical certificate issued by Neurologist Dr.S. Ram Manohar, P.V.S. Hospital. It shows that he had treated the petitioner for post traumatic memory impairment and anoemia and he had a permanent sequelae of anoemia due to the head injury sustained in the accident. Ext.A17 is the disability certificate assessing disability at 57%. According to the claimant, though disability certified is only 57% and he is unable to do

any substantial work. Tribunal referred the claim to Medical Board in the Medical College, Pariyaram. Ext.X1 is the certificate issued by the Medical Board while taking into account Ext.A17 medical certificate. Medical Board assessed 32% disability. The difficulties noted by the Board are defective hearing of right ear and reduction of smell. Not satisfied by this, tribunal referred the claimant to Government Medical College, Kozhikode. The Medical Board by Ext.X2 certificate assessed the disability at 25%. The Medical Board has certified that the person is having insomnia, memory disturbance, persistent giddiness and difficulty in carrying out his routine works. The tribunal did not accept that also and added the percentage of disability certified in Ext.X1 and Ext.X2 to make it 57% and one-third of the same was taken (19% as disability). We are of the opinion that the method adopted by the tribunal is totally perverse. Tribunal sent the appellant for final assessment to Government Medical College, Kozhikode and Medical Board assessed the disability at 25%. Tribunal ought to have accepted the same. Contention of the claimant that in view of the injuries and usual giddiness, he should be granted compensation for 100%

cannot be accepted. Tribunal ought to have granted compensation for 25% disability in view of Ext.X2 medical certificate issued by the competent Medical Board of the Government Medical College, Kozhikode. According to the claimant, as a rubber tapper, he was getting more than Rs.3,000/- per month. Learned counsel argued that during the relevant time even minimum wages of a rubber tapper was about Rs.150/- per day. In the absence of data, tribunal fixed the monthly income as Rs.1,100/-. We are not interfering in the same for the purpose of calculation of compensation. Considering the age of the claimant, Tribunal rightly fixed 15 as the multiplier. Hence, compensation payable for disability and loss of earning power is Rs.1500 x 12 x $\frac{25}{100}$ x 15 = Rs.67,500/-.

Tribunal has awarded only Rs.51,320/-. Hence, additional compensation payable under this head is Rs.16,180/-. According to the appellant, he has spent Rs.50,000/- at P.V.S. Hospital, Kozhikode for treatment and operation. He also proved Ext.A6 series of medical bills. After referring certain bills, according to the tribunal, acceptable bill of Rs.8170/- was produced before the

tribunal and awarded Rs.8,200/-. He was an inpatient in the Medical College Hospital, Kozhikode for 22 days. He was under treatment for about six months. There are many expenses not covered by bills. No amount was awarded for attendant's expenses. Considering all this, we award Rs.3,500/- for reimbursement of expenses for medical attendant's expenses and other treatment expenses. Thus, claimant is entitled to an additional amount of Rs.19,680/-. The above amount shall be deposited by the third respondent insurance company within three months from the date of receipt of a copy of this judgment with 8% interest from the date of application till deposit. On deposit of the same, appellant is allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.368/2004

JUDGMENT

Dated:1st June, 2007